

STATE OF MICHIGAN
COURT OF APPEALS

SAMUEL HERRICK,

Plaintiff-Appellant,

v

RONALD A. SOSNOWSKI,

Defendant-Appellee,

and

GEORGE R. HALES,

Defendant.

UNPUBLISHED

May 24, 2005

No. 252299

Wayne Circuit Court

LC No. 02-235677-NI

Before: Murphy, P.J., and White and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant summary disposition. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, defendant, and George Hales were involved in an automobile accident. Plaintiff sued both defendant and Hales. The case was sent to case evaluation and the evaluators awarded \$5,000 against Hales and \$45,000 against defendant. Plaintiff accepted both awards; Hales also accepted the award, but defendant rejected. Plaintiff and Hales entered into a release agreement and a stipulated dismissal. Defendant then moved for summary disposition, claiming that the broadly worded release included defendant. The release provided:

THIS INDENTURE WITNESSETH that, in consideration of the sum of **FIVE THOUSAND (\$5,000.00) DOLLARS**, receipt whereof is hereby acknowledged, for myself and for my heirs, personal representatives and assigns, I do hereby release and forever discharge **George Hales and Encompass Insurance Company, formerly known as CNA Insurance Companies, only**, and any other person, firm or corporation charged or chargeable with responsibility or liability, their heirs, representatives and assigns, from any and all claims, demands, damages, costs, expenses, loss of services, actions and causes of action, arising from any act or occurrence up to the present time and particularly on account of all personal injury, disability, property damage, loss of damages of

any kind already sustained or that I may hereafter sustain in consequence of an accident that occurred on or about the 18th day of December, 2000, in the City of Livonia, County of Wayne, State of Michigan. [Emphasis in original.]

In plaintiff's answer to defendant's motion, plaintiff indicated that he and Hales had set aside the release based on mutual error and entered into a release that excluded the language "and any other person, firm or corporation charged or chargeable with responsibility or liability." Defendant countered that the original release was unambiguous and binding. The trial court granted the motion, presumably pursuant to MCR 2.116(C)(7).

Both parties cite to or attempt to distinguish *Romska v Oppen*, 234 Mich App 512; 594 NW2d 853 (1999), and *Ruppel v Carlson*, unpublished opinion per curiam of the Court of Appeals, issued November 8, 2002 (Docket No. 235266). Those cases are distinguishable from the case at bar because the language in the original release was different from the language of the two releases in those cases. The original release stated "**George Hales and Encompass Insurance Company, formerly known as CNA Insurance Companies, only . . .**" The use of the word "only" followed by "and any other person, firm or corporation charged or chargeable with responsibility or liability" created an ambiguity that did not exist in the other cases. The print was in bold type, indicating an emphasis on the limited nature of the release. Simply looking to the word "and" would result in ignoring the word "only." Similarly, a focus on the word "only" would render the following clause nugatory. The language is simply unclear. *Romska* and *Ruppel* do not prevent the use of parol evidence in all cases where a release is signed; rather, the cases prevent the use of parol evidence where the release is unambiguous. Having found the original release to be ambiguous, it is permissible to look to the intent of the parties.

It is difficult to imagine that plaintiff meant to forego further action against defendant for \$5,000. Plaintiff's affidavit, which was attached to his motion for reconsideration, provided that his intention was to discharge Hales only. In fact, counsel for Hales even agreed with plaintiff that the language of the original release did not accurately reflect the parties' intention and agreed to enter into a new, amended release. Additionally, the stipulated dismissal provided that the dismissal was as to Hales, only. The language of the dismissal was further evidence of the limited nature of the release. Because the language of the original release was ambiguous, the trial court should have considered parol evidence as to the parties' intention. Its failure to do so was error requiring reversal.

Reversed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Michael R. Smolenski